



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-100
June 24, 2004

MISCELLANEOUS ADMINISTRATIVE REVISIONS

BACKGROUND: NASA has modified its current practice for issuance and maintenance of the NASA FAR Supplement (NFS) by only publishing in the Federal Register those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors and are subject to public comment. The NFS will continue to integrate into a single document both regulations subject to public comment and internal Agency guidance and procedures that do not require public comment. The single official NASA-maintained version of the NFS is available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

The periodic review of the NFS conducted in concert with the above new practice identified various administrative and editorial changes. In addition to the changes required for completeness and understanding of regulatory text, editorial and administrative changes are made to internal guidance and procedures to update document references and titles.

CLAUSE CHANGES: None.

PARTS AFFECTED: Parts 1831, 1832, 1836, and 1837.

REPLACEMENT PAGES: You may use the enclosed pages to replace Part 1831, 32:3, 32:4, 36:6, and Part 1837 of the NFS.

TYPE OF RULE AND PUBLICATION DATES: These changes were published as final rules in the Federal Register (69 FR 35270 - 35272) on June 24, 2004.

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Enclosures

PART 1831
CONTRACT COST PRINCIPLES AND PROCEDURES

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PART 1831
CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.2--Contracts with Commercial Organizations

1831.205 Selected costs.

1831.205-6 Compensation for personal services.

1831.205-670 Evaluation of contractor and subcontractor compensation for service contracts.

(a) The contracting officer must evaluate the reasonableness of compensation for service contracts:

- (1) Prior to the award of a cost reimbursement or non-competitive fixed-price type contract which has a total potential value in excess of \$500,000, and
- (2) Periodically after award for cost reimbursement contracts, but at least every three years.

(b) The contracting officer must ensure the reasonableness of compensation is evaluated for cost reimbursement or non-competitive fixed-price type service subcontracts under a prime contract meeting the criteria in paragraph (a)(1) of this section where:

- (1) The subcontract has a total potential value in excess of \$500,000; and
- (2) The cumulative value of all of a subcontractor's service subcontracts under the prime contract is in excess of 10 percent of the prime contract's total potential value.

(c)(1) Offerors must be required to submit as part of their proposals a compensation plan addressing all proposed labor categories. Offerors also must demonstrate in writing that their proposed compensation is reasonable.

(2) Subcontractors meeting the criteria in paragraph (b) of this section must be required to comply with paragraph (c)(1).

(d) The contracting officer's preaward evaluation of each offeror's and their subcontractors' compensation should be done as part of, or in addition to DCAA audits, price analyses, or any other means deemed to be necessary.

(e) The results of the contracting officer's evaluation, including any excessive compensation found and its planned resolution, must be addressed in the prenegotiation position memorandum, with the final resolution discussed in the price negotiation memorandum.

(f) The contracting officer must ensure that the reasonableness of compensation for cost reimbursement subcontracts meeting the criteria in paragraphs (b)(1) and (2) of this section is periodically reviewed after award, but at least every three years.

(g) The results of the periodic evaluations of contractor and subcontractor compensation after contract award must be documented in the contract file.

1831.205-671 Solicitation provision.

The contracting officer must insert a provision substantially the same as the provision at 1852.231-71, Determination of Compensation, in solicitations for services which contemplate the award of a cost reimbursement or non-competitive fixed-price type service contract having a total potential value in excess of \$500,000.

1831.205-32 Precontract costs.

(1) Precontract costs are applicable only to --

(i) Sole source awards, except those resulting in firm-fixed price or fixed-price with economic price adjustment contracts; or

(ii) Awards resulting from broad agency announcements.

(2) The procurement officer is the approval authority for the use of precontract costs.

Authorization must be in writing and shall address the following:

(i) The necessity for the contractor to initiate work prior to contract award.

(ii) The start date of such contractor effort.

(iii) The total estimated time of the advanced effort.

(iv) The cost limitation.

(3) Authorization to incur precontract costs must be provided to the contractor in writing and shall include the following:

(i) The start date for incurrence of such costs.

(ii) The limitation on the total amount of precontract costs which may be incurred.

(iii) A statement that the costs are allowable only to the extent they would have been if incurred after formal contract award.

(iv) A statement that the Government is under no obligation to reimburse the contractor for any costs unless a contract is awarded.

1831.205-70 Contract clause.

The contracting officer must insert the clause at 1852.231-70, Precontract Costs, in contracts for which specific coverage of precontract costs is authorized.

Subpart 1832.2--Commercial Item Purchase Financing**1832.202-1 Policy.**

(b)(6) Advance payment limitations do not apply to expendable launch vehicle (ELV) service contracts.

1832.206 Solicitation provisions and contract clauses.

(g)(2) The installment payment rate shall be that which is common in the commercial marketplace for the purchased item. If there is no commonly used rate, the contracting officer shall determine the appropriate rate. In no case shall the rate exceed that established in the clause at FAR 52.232-30.

Subpart 1832.4--Advance Payments for Non-Commercial Items**1832.402 General.**

(e)(1) The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for all advance payments except the following:

(A) The procurement officer is the approval authority for non-fee bearing contracts with domestic entities when the cumulative contract value is \$25,000,000 or less, and for all increases to such contracts over \$25,000,000 previously approved by the Headquarters Office of Procurement as long as the advance payment amount outstanding at any time is not increased.

(B) The contracting officer is the approval authority for the following actions. In these cases, a findings and determination (see FAR 32.410) is not required.

(a) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I contracts. A class deviation has been signed authorizing use of advance payments on these contracts. The contracting officer shall annotate the contract file that the deviation is on file at the NASA Headquarters Office of Procurement (Code HK).

(b) Expendable launch vehicle (ELV) service contracts. 42 U.S.C. 2459c authorizes advance payments for these contracts. The contracting officer shall document the contract file with the rationale for approving the use of advance payments.

(e)(2) All advance payment authorization requests, except those authorized by 1832.402(e)(1)(B), shall be coordinated with the installation Deputy Chief Financial Officer.

1832.406 Letters of credit.

(b)(1) Each installation is considered a contracting agency for the purposes of this requirement.

1832.407 Interest.

(d)(1) Advance payments without interest are authorized.

1832.409 Contracting officer action.**1832.409-1 Recommendation for approval.****1832.409-170 NASA procedure for approval.**

In addition to the items listed in FAR 32.409-1, requests for Headquarters approval of advance payments (see 1832.402(e)(1)) shall include the following information:

- (a) Name of the cognizant NASA Headquarters program or staff office;
- (b) Name and phone number of the contracting officer or negotiator;
- (c) A copy of the proposed advance payments clause;
- (d) If a profit/fee is contemplated, the factors considered in determining the profit/fee (see 1815.404-470);
- (e) Information justifying the adequacy of security to cover the maximum advance payment amount at any time outstanding.

1832.410 Findings, determination, and authorization.

(b) Generally, the format in FAR 32.410 should be used, tailored as follows:

(i) In format subparagraph (a)(2), use the phrase "Advance payments (in an amount not to exceed \$..... at any time outstanding)" in all determinations and findings. The phrase means the maximum unliquidated dollar amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.

(ii) In the second sentence of format subparagraph (a)(4), delete the reference to a special financial institution account if no special financial institution account is required.

(iii) Use format subparagraph (a)(6), not (a)(7) or (a)(8).

(iv) At the end of format paragraph (b), use "is in the public interest."

(v) In format paragraph (c), use the phrase "(the amount at any time outstanding)" in all determinations and findings.

1832.412 Contract clause.

(e) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs.

(f) See 1832.412(e).

1832.412-70 NASA contract clauses.

When the clause at FAR 52.232-12 or its Alternates II or V are used, insert the clause at 1852.232-70, NASA Modification of FAR 52.232-12.

Subpart 1832.5--Progress Payments Based on Costs**1832.501 General.**

1832.501-1 Customary progress payment rates.

(a) The customary progress payment rate for all NASA contracts is 85 percent for large business, 90 percent for small business, 95 percent for small disadvantaged business, and 100 percent for Phase II contracts in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. The contracting officer shall insert the applicable percentage in paragraphs (a) and (b) of the clause at FAR 52.232-16.

"Partnering" means a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

1836.7002 General.

(a) The establishment of a partnering environment usually leads to higher quality products completed more quickly at lower overall costs and with fewer accidents and litigation.

(b) The use of partnering is encouraged as it has been shown to reduce the average contract cost and schedule growth and to reduce contract claims and litigation.

(c) Partnering is a voluntary contract relationship within the management process that is not to be used to unofficially alter terms of the contract.

1836.7003 Policy.

(a) Partnering should be used on a contract when the contracting officer, in coordination with the project manager, determines that the benefits to be achieved from its use are expected to be greater than the costs.

(b) In determining whether the benefits of partnering are greater than the costs, the following factors should be considered:

- (1) The estimated dollar value of the contract;
- (2) The complexity of the work to be performed;
- (3) The contemplated length of the contract; and
- (4) The estimated costs to be incurred in conducting the partnership development and team building initial and follow-up workshops.

1836.7004 NASA solicitation provision and contract clause.

The contracting officer may insert a clause substantially the same as stated at 1852.236-75, Partnering for Construction Contracts, in solicitations and contracts for construction, when it has been determined that the benefits to be derived from partnering exceed the costs.

PART 1837
SERVICE CONTRACTING

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PART 1837
SERVICE CONTRACTING

Subpart 1837.1--Service Contracts--General

1837.101 Definitions.

“**Pension portability**” means the recognition and continuation in a successor service contract of the predecessor service contract employees' pension rights and benefits.

1837.104 Personal services contracts.

(b) Section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)) authorizes NASA "to obtain services as authorized by Section 3109 of Title 5, United States Code." It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in NPR 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants.

1837.110 Solicitation provisions and contract clauses.

1837.110-70 NASA solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.237-70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes, or other emergencies.

(b) The contracting officer shall insert the clause at 1852.237-71, Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination in 1837.170(a)(2).

1837.170 Pension portability.

(a) It is NASA's policy not to require pension portability in service contracts. However, pension portability requirements may be included in solicitations, contracts, or contract modifications for additional work under the following conditions:

(1)(i) There is a continuing need for the same or similar services for a minimum of five years (inclusive of options), and, if the contractor changes, a high percentage of the predecessor contractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services is awarded, and the total contract period covered by the plan covers a minimum of five years (including both the predecessor and successor contracts); and

(2) The procurement officer determines in writing, with full supporting rationale, that such a requirement is in the Government's best interest. The procurement officer shall maintain a record of all such determinations.

(b) When pension portability is required, the plan shall comply with the requirements of the clause at 1852.237-71, Pension Portability, (see 1837.110-70(b)), and the contract shall also include a clear description of the plan, including service, pay, liabilities, vesting, termination, and benefits from prior contracts.

Subpart 1837.2--Advisory and Assistance Services

1837.203 Policy.

(c) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see [NPR-NPR 3300.1](#), Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants).

1837.204 Guidelines for determining availability of personnel.

(a)(i) Outside peer review evaluators may be used to evaluate SBIR, STTR, NRA, AO, and unsolicited proposals without making the determination of non-availability.

(ii) For all other actions, the NASA official one level above the NASA program official responsible for the evaluation shall make the determination, with the concurrence of the legal office. The contracting officer shall ensure that a copy of the determination is in the contract file prior to issuance of a solicitation.

(b) The official designated in paragraph (a)(ii) of this section is responsible for the actions required in FAR 37.204(b).

(c) The agreement shall be made by the program official responsible for the evaluation and the contracting officer.

(e) The Assistant Administrator for Procurement (Code HS) is the approval authority for class determinations. The class determination request shall include the assessment required by FAR 37.204(b).

